



September 19, 2018

Secretary Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Subject: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84 and WT Docket No. 17-79

Dear Secretary Dortch:

On behalf of the City of University Heights, Ohio, I am writing to express my concerns about the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment.

The City of University Heights, like many cities in Ohio, welcomes the rapid deployment of new technology, both for our residents and businesses. While we appreciate the Commission's efforts to engage with local governments on this issue and share the Commission's goal of ensuring the growth of cutting-edge broadband services for all Americans, we remain deeply concerned about several provisions of this proposal. Local governments have an important responsibility to protect the health, safety and welfare of residents, and we are concerned that these preemptive measures compromise that traditional authority and expose wireless infrastructure providers to unnecessary liability.

- **The FCC's proposed new collocation shot clock category is too extreme.**

The proposal designates any preexisting structure, regardless of its design or suitability for attaching wireless equipment, as eligible for this new expedited 60 day shot clock. When paired with the FCC's previous decision exempting small wireless facilities from federal historic and environmental review, this places an unreasonable burden on local governments to prevent historic preservation, environmental, or safety harms to the community. The addition of up to three cubic feet of antenna and 28 cubic feet of additional equipment to a structure not originally designed to carry that equipment is substantial and may necessitate more review than the FCC has allowed in its proposal.

- **The FCC's proposed definition of "effective prohibition" is overly broad.**

The draft report and order proposes a definition of "effective prohibition" that invites challenges to long-standing local rights of way requirements unless they meet a subjective and unclear set of guidelines. While the Commission may have intended to preserve local review, this framing and definition of effective prohibition opens local governments to the likelihood of more, not less, conflict and litigation over requirements for aesthetics, spacing, and undergrounding.

- **The FCC's proposed recurring fee structure is an unreasonable overreach that will harm local policy innovation.**

We disagree with the FCC's interpretation of "fair and reasonable compensation" as meaning approximately \$270 per small cell site. Local governments share the federal government's goal of ensuring affordable broadband access for every American, regardless of their income level or address. That is why many cities have worked to negotiate fair deals with wireless providers, which may exceed that number or provide additional benefits to the community. Additionally, the Commission has moved away from rate regulation in recent years. Why does it see fit to so narrowly dictate the rates charged by municipalities? This would be an unreasonable restriction on local government's ability to effectively serve their citizens with appropriate review. It also unfairly shifts the cost burden of the review from the private sector to local governments.

The combined effect of the proposed limits on review timeframes and fees, and unclear definition of effective prohibition is to incentivize the proliferation of small cell wireless facilities in public rights-of-way by telecom providers outside of a planned and coordinated process, and without consideration of public health, safety, and welfare.

Throughout the last calendar year many communities across Ohio, including University Heights, worked in a collaborative fashion with wireless telecommunications companies to address our concerns with the small cell facility language enacted in a separate piece of state legislation. After months of work, the interested parties (cities, wireless providers and Ohio legislators) reached a consensus resolution that addressed the telecommunication industry's real concerns of ensuring greater predictability in deploying new technology throughout Ohio, while respecting the character of local municipalities and protecting our infrastructure investment.

The outcome of that compromise is House Bill 478, which was signed into law earlier this year by Governor John Kasich. If the proposed rule were to take effect, the hard work and equitable compromise accomplished through the bill will be undone. Therefore, we oppose this effort to restrict local authority and urge you to oppose this declaratory ruling and report and order.

Despite the concern regarding issues of local sovereignty and possible federal takings, should the Commission proceed with enacting this Order, we request an exemption for those states in which the wireless industry and municipalities have reached

consensus regarding the placement and installation of small cell facilities and the associated fees, timelines and aesthetics.

The City of University Heights, Ohio, has been a national leader working with private business to build the best broadband infrastructure possible for our residents. We invite you to look closely at what University Heights has done to promote wireless and broadband buildout in our city through engagement and facilitation of both private and public investment. You will find an already established balance between municipal regulations and wireless industry deployment that works well for everyone.

We oppose this effort to restrict local authority and stymie local innovation, while limiting the obligations providers have to our community. We urge you to oppose this declaratory ruling and report and order.

Sincerely,



Mayor Michael Dylan Brennan

Cc: Senator Sherrod Brown
Senator Rob Portman
Congresswoman Marcia Fudge
Congresswoman Marcy Kaptur
Congressman David Joyce
Congressman Jim Renacci